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 7 **SEALED**
 8 **BY COURT ORDER**

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 BY RICHARD W. LIEKING
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 SAN FRANCISCO, CALIFORNIA
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ORIGINAL

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

11	UNITED STATES, <i>ex rel.</i> ,	CASE NO.	CV 08 3411
12	BONNIE LAMMERS, M.D.,		
13	Plaintiffs	COMPLAINT FOR VIOLATIONS OF FALSE CLAIMS ACT 31 U.S.C. §3730;	
14	v.		
15	MICHAEL HEBRARD, M.D.,	FILED UNDER SEAL PURSUANT TO 31 U.S.C. §§ 3730(b)(2) and (3)	
16	RICHARD LAVIGNA, D.P.M,		
17	FARIDEH HEIDARPOUR, ALI		
18	HEIDARPOUR, ADVANCED		
19	PHYSICAL MEDICINE & REHAB		
20	GROUP, INC., ADVANCED		
21	OCCUPATIONAL		
22	REHABILITATION, INC.,		
23	ADVANCED MEDICINE AND		
24	REHABILITATION OF TEXAS, INC.,		
25	ADVANCED MEDICINE AND		
26	REHABILITATION OF TEXAS, P.A.,		
27	Defendants		

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 24 COMES NOW *QUI TAM* RELATOR-PLAINTIFF Bonnie Lammers, M.D.,
 25 suing for herself and for the United States of America, and alleges as follows:

26 1. This action alleges the defendants systematically defrauded the United
 27 States through its Office of Workers Compensation Programs, federal employee

1 healthcare programs and the Medicare program, by making false claims, and causing false
2 claims to be made, through 1) falsely billing for invasive EMG's as part of EMG/NCV
3 studies, when only an NCV was performed, 2) falsely billing for unreasonable and
4 unnecessary EMG/NCV studies, 3) falsely billing for multiple unreasonable and
5 unnecessary Functional Capacity Evaluations, 4) falsely billing for unreasonable and
6 unnecessary non-invasive vascular studies, 5) falsely billing for unreasonable and
7 unnecessary use of narcotics and other pain treatments and 6) falsely billing for
8 unreasonable and unnecessary orthotics.

I. JURISDICTION

12 2. Jurisdiction over the federal claims asserted herein is based upon federal
13 subject matter pursuant to 31 U.S.C. § 3729 *et seq.*

14 3. The Court may exercise personal jurisdiction over the defendants pursuant
15 to 31 U.S.C. § 3732(a).
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II. VENUE

18 4. Venue is proper in the Northern District of California, under 31 U.S.C. §
19 3732 and 28 U.S.C. §§ 1391(b) and (c) because the defendants transact business in this
20 District and because the defendants committed acts within this district that violated 31
21 U.S.C. § 3729.

III. PARTIES

24 5. *Qui tam* plaintiff Bonnie Lammers, M.D., is a licensed physician and a
25 board certified internist. Dr. Lammers provided contract physician services in the
26 defendants' Dallas, Texas clinic, Advanced Medicine and Rehabilitation of Texas, Inc., in
27 April and May 2008, when she became aware of the defendants' false billings and

1 complained internally to management. Shortly after complaining to management, Dr.
2 Lammers' contract services were terminated. Dr. Lammers is a resident and citizen of the
3 United States, residing in Texas.

4 6. Defendant Michael Hebrard, M.D. is a California physician, who is also
5 applying for his Texas medical license. Dr. Hebrard is an owner and director of
6 defendants Advanced Physical Medicine & Rehab Group, Inc., Advanced Occupational
7 Rehabilitation, Inc., and Advanced Medicine and Rehabilitation of Texas, Inc., and is a
8 principal in Advanced Medicine and Rehabilitation of Texas, P.A. Dr. Hebrard has
9 participated in carrying out the fraud schemes alleged herein for at least the past 10 years.
10 At all relevant times, Dr. Hebrard directed the participation of the corporate and
11 professional association defendants in the fraud schemes alleged herein. Dr. Hebrard
12 resides in the Northern District of California.

13 7. Richard LaVigna, D.P.M. is a California doctor of podiatric medicine, who
14 is also applying for his Texas podiatry license. Dr. LaVigna is an owner and director of
15 defendants Advanced Physical Medicine & Rehab Group, Inc., Advanced Occupational
16 Rehabilitation, Inc., and Advanced Medicine and Rehabilitation of Texas, Inc., and is a
17 principal in Advanced Medicine and Rehabilitation of Texas, P.A. Dr. LaVigna has
18 participated in carrying out the fraud schemes alleged herein for at least the past 10 years.
19 At all relevant times, Dr. LaVigna directed the participation of the corporate and
20 professional association defendants in the fraud schemes alleged herein. Dr. LaVigna
21 resides in the Northern District of California.

22 8. Farideh Heidarpour (also known as Fariday Heidarpour) is an individual
23 residing in the Northern District of California, but also has homes in Oklahoma and
24 Texas. Ms. Heidarpour is an expert in the coding and billing details of the Federal

1 worker compensation system, who helped devise the fraudulent billing practices alleged
2 herein. Ms. Heidarpour has participated in carrying out the fraud schemes alleged herein
3 for at least the past 10 years. Ms. Heidarpour is a financial principal in, and a director of,
4 defendants Advanced Physical Medicine & Rehab Group, Inc., Advanced Occupational
5 Rehabilitation, Inc., and Advanced Medicine and Rehabilitation of Texas, Inc. At all
6 relevant times, Ms. Heidarpour directed the participation of the corporate defendants in
7 the fraud schemes alleged herein.

9. Ali Heidarpour is an individual residing in the Northern District of California, but has also homes in Oklahoma and Texas. Mr. Heidarpour works in conjunction with his mother, defendant Farideh Heidarpour, and with defendants Dr. Hebrard and Dr. LaVigna to carry out the fraudulent billing schemes alleged herein.

10. Advanced Physical Medicine & Rehab Group, Inc. ("Advanced Rehab CA") is a California corporation, headquartered in the Northern District of California. Advanced Rehab CA is owned and run by defendants Michael Hebrard, M.D., Richard LaVigna, D.P.M. and Farideh Heidarpour.

11. Advanced Occupational Rehabilitation, Inc. ("Advanced Rehab OK") is an Oklahoma corporation. Advanced Rehab OK is owned and run by defendants Michael Hebrard, M.D., Richard LaVigna, D.P.M. and Farideh Heidarpour.

12. Advanced Medicine and Rehabilitation of Texas, Inc. ("Advanced Rehab TX") is a Texas corporation, headquartered in Dallas, Texas. Advanced Rehab TX is owned and controlled by defendants Michael Hebrard, M.D., Richard LaVigna, D.P.M. and Farideh Heidarpour.

13. Advanced Medicine and Rehabilitation of Texas, P.A. ("Advanced Rehab P.A.") is a Professional Association, headquartered in Dallas, Texas. Advanced Rehab

1 P.A. is owned and controlled by defendants Michael Hebrard, M.D., Richard LaVigna,
2 D.P.M.

3 14. Plaintiff is informed and believes, and thereon alleges, that Defendants, and
4 each and all of them, at all relevant times hereinafter mentioned were the agents,
5 employees, servants, joint venturers, parent companies, successor companies directors,
6 fiduciaries, representatives, and/or co-conspirators of each of the remaining defendants.
7 Defendants, in doing the things hereinafter alleged, were acting within the course and
8 scope of such relationship and were responsible for the occurrences herein alleged.

9

10 IV. BACKGROUND

11 15. The United States, through its Office of Workers Compensation Programs,
12 pays enrolled providers to treat injured federal employees. In addition, other federal
13 employee healthcare programs are federally funded and designed to provide healthcare to
14 federal employees and their families. The Medicare program is a federally funded
15 healthcare program designed to provide healthcare primarily for the aged.
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17 16. Not surprisingly, in order to prevent waste, fraud and abuse, these Federal
18 healthcare programs have explicit restrictions on what may, and may not, be covered and
19 the reimbursement rates for coverage. One of those requirements is that the medical
20 treatment must be medically reasonable and necessary. Medicare providers have a legal
21 duty to familiarize themselves with Medicare's coverage and reimbursement rules,
22 including those stated in the Medicare Manuals. Heckler v. Community Health Services
23 of Crawford County, Inc., 467 U.S. 51, 64-65 (1984). A provider's failure to inform
24 itself of the legal requirements for participation in the program acts in reckless disregard
25 or deliberate ignorance of those requirements, either of which is sufficient to charge it
26 with knowledge of the falsity of the claims or certifications in question, under the False
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1 Claims Act. *United States v. Mackby*, 261 F.3d 821, 828 (9th Cir. 2001). These duties
2 also apply to providers who provide healthcare services through the Office of Workers
3 Compensation Programs and other Federal Employee healthcare programs.

4 **V. DEFENDANTS' MISCONDUCT**

5 17. The Defendants run clinics that are simply “worker compensation mills”
6 and falsely bill for needless tests and non-existent reading of those tests. The Defendants
7 have engaged in at least six schemes to defraud the federal healthcare programs
8 mentioned above, especially in the treatment of injured federal workers in the programs
9 administered through the Office of Workers Compensation, by 1) falsely billing for
10 invasive EMG’s as part of EMG/NCV studies, when only an NCV was performed, 2)
11 falsely billing for unreasonable and unnecessary EMG/NCV studies, 3) falsely billing for
12 multiple unreasonable and unnecessary Functional Capacity Evaluations, 4) falsely billing
13 for unreasonable and unnecessary non-invasive vascular studies, 5) falsely billing for
14 unreasonable and unnecessary use of narcotics and other pain treatments and 6) falsely
15 billing for unreasonable and unnecessary orthotics. Finally, the patients are told by
16 defendants that it is guaranteed the patients will receive money if they go through the full
17 regimen of testing and evaluations, and the patients are “coached” on how to respond to
18 physician inquiries in the evaluation of their injuries.

19 18. In fact, defendant/owner Farideh Heidarpour (who is not physician) has a
20 pre-written diagnosis for every new patient and a list of needless tests that are always
21 scheduled for each patient’s first day in the clinic. These tests often take place before the
22 patient is seen by any physician. Ms. Heidarpour also has a pre-written list of tests to be
23 performed on each patient at a later point in their treatment. Ms. Heidarpour even has a
24 script the physicians are ordered to follow, which includes the ordering of all of these
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1 tests. When qui tam plaintiff Bonnie Lammers, M.D. refused to order these batteries of
2 needless tests, she was rebuked by the defendants and later learned the tests had already
3 been performed. The defendants went so far as to change Dr. Lammers' dictated notes on
4 patients so that the records falsely reflected that Dr. Lammers had ordered the defendants'
5 complete series of tests on each patient. Defendants even had a stamp of Dr. Lammers'
6 signature that they would falsely place on patient records to make it appear that Dr.
7 Lammers had ordered a full battery of tests and treatments. These tests and treatment
8 plans are discussed below.

10 19. Billing invasive EMGs when none are performed. Electromyography
11 ("EMG") is a test to record electrical activity in muscle tissue, and is performed by
12 inserting needles into the muscle to record the electrical activity. EMG testing is used to
13 distinguish nerve impairment (neuropathy) from muscle disease (myopathy). Nerve
14 conduction velocity ("NCV") is a test to record the speed at which impulses travel
15 through nerves and measure electrical responses. Whereas EMG is an invasive test with
16 needles, NCV is not. For the NCV, two electrode patches are placed on the skin in a
17 specific location. NCV is not a test to distinguish nerve impairment from muscle disease,
18 and is of no diagnostic value in that determination. The surface electrode patches used in
19 NCVs simply pick up the electrical signal as it travels along the nerve in that area.
20 Despite only performing NCVs, the defendants have a standard practice of billing for
21 EMGs and for a combination of EMGs and NCVs when only the surface NCV study is
22 performed.

23 20. Billing for multiple unnecessary EMG/NCV studies. In addition to falsely
24 billing for EMGs when none are performed, the defendants also have a standard practice
25 of billing for EMG and NCV studies on every patient that walks in the door, as well as for
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1 physician readings of each of these tests. The reading of these tests require interpretation
2 by a specially trained physician, which defendants did not have in their employee. Based
3 on information and belief, these tests were never actually read and used in the diagnosis
4 and treatment of patient. Additionally, by billing for these tests on every patient, many of
5 these tests are not medically reasonable and necessary for the particular patients. Some of
6 the billing codes that are misused by defendants are:
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8 95903 Motor Nerve Conduction Study

9 95904 Sensory Nerve Conduction Study

10 95861 EMG for two limbs

11 95900 EMG/NCV - Motor

12 95904 EMG/NCV - Sensory

13 21. Billing for multiple unnecessary Functional Capacity Evaluations. The
14 Functional Capacity Evaluation (“FCE”) is a test performed by an Occupational
15 Therapist. The injured body part is tested by asking the patient to perform tasks of
16 various difficulties that stress that body part, and the patient’s ability to perform these
17 tasks is measured and recorded. Most worker’s compensation patients in state worker’s
18 compensation systems never receive an FCE evaluation, as this test is appropriate in only
19 some instances for some patients at the end of their treatment to determine the patient’s
20 functional ability to return to work.
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22 22. However, it is the defendants’ standard practice to perform FCEs not only
23 on every patient, but *multiple times* on every patient. They perform these FCEs even on
24 patients that have a history of chest pain and diabetes, without ever clearing the patient
25 for these tests through a cardiologist. When Dr. Lammers tried to postpone the FCEs
26 until a patient with these symptoms could see a cardiologist, the defendants refused to
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1 postpone the tests. This use of FCEs is far outside of every guideline on the topic and
2 results in falsely billing for FCEs that are not medically reasonable and necessary.

3 23. Billing for unnecessary non-invasive vascular studies. Non-Invasive
4 Vascular Studies utilize doppler/ultrasound to measure bloodflow going through blood
5 vessels of the extremities and record the results in a form that looks much like an EKG.
6 The defendants perform these studies needlessly on patients with no symptoms that call
7 for these tests to be done. Additionally, the defendants perform these studies on patients
8 with contraindications that should prevent them from proceeding with the test.
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10 (Pregnancy, peripheral edema, signs of vascular insufficiency.) These tests are performed
11 on every patient by poorly trained technicians and are not being interpreted by anyone,
12 although the defendants falsely bill as though they are. This use of non-invasive vascular
13 studies is far outside of every medical standard and it results in falsely billing for non-
14 invasive vascular studies that are not medically reasonable and necessary.
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16 24. Billing for unnecessary narcotics and pain treatments. Another scheme of
17 the defendants is to send every patient for “pain management.” Almost without
18 exception, each patient receives three medications for pain. On information and belief, at
19 least one or two of the medications are narcotics, such as hydrocodone. Generally,
20 narcotics are given short-term after a surgical procedure or an injury. However, under the
21 defendants’ treatment scheme, patients are prescribed narcotics for everything including
22 carpal tunnel syndrome and heel spurs. This abuse of narcotics for long - term conditions
23 recklessly exposes patients to health risks including narcotic addiction. The defendants’
24 billings to the federal programs are knowingly false because they are not for medically
25 reasonable and necessary narcotics use.
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27 25. Billing for unreasonable and unnecessary orthotics. For every patient with
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a complaint below the waist, the defendants fit the patient for orthotics. By fitting each of these patients for orthotics, the prescription for many of these orthotics are not medically reasonable and necessary for the particular patients.

26. Promising money and coaching patients to respond to physician inquiries.

Finally, patients are “coached” by the defendants to exaggerate their pain and injuries, with the purpose of prolonging treatment and testing, and receiving disability awards. In this process, patients are told by defendants that the patients are “guaranteed” to receive money if they will go through the full regimen of studies and treatments.

VI. COUNT ONE

(For Violation of 31 U.S.C. § 3729 et seq.)

27. *Qui tam* plaintiff hereby realleges and incorporates herein by this reference paragraphs 1 through 26, inclusive, hereinabove, as though fully set forth at length.

28. Defendant has knowingly caused to be submitted, false claims for payment, as set forth above, in violation of 31 U.S.C. § 3729(a)(1). Additionally, defendant has knowingly caused to be used false records or statements to get false or fraudulent claims paid by the United States, in violation of 31 U.S.C. § 3729(a)(2). Further, defendants conspired to defraud the United States by getting a false or fraudulent claim allowed or paid, in violation of 31 U.S.C. § 3729(a)(3). As a result of such knowing submission of false claims, defendant has wrongfully caused payments to be made from, and has wrongfully received monies derived from, the United States Treasury.

WHEREFORE, *qui tam* plaintiff prays for relief as follows:

1. Full restitution to the United States of all money damages sustained by each, respectively;

2. For three times the dollar amount proven to have been wrongfully sold to,

paid by or withheld from the United States;

3. For maximum civil penalties for all false records, statements, certifications and claims submitted to the United States;

4. For costs of suit, reasonable attorney's fees and the maximum relator share; and

5. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Qui Tam Plaintiff hereby demands trial by jury.

Respectfully Submitted,
WARREN • BENSON LAW GROUP

Dated: July 14, 2008

Donald R. Warren
Counsel for *qui tam* plaintiff Bonnie Lammers, M.D.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 7825 Fay Avenue, Suite 200, La Jolla, California 92037.

On July 14, 2008, I served the attached:

Complaint

by placing [] the original true copies thereof enclosed in sealed envelopes addressed as follows:

Michael Mukasey, Atty. General
U.S. Department of Justice
10th and Constitution
Washington, D.C. 20530

Joseph P. Russoniello, U.S. Atty.
c/o Civil Process Clerk
16-1111 U.S. Courthouse
450 Golden Gate Ave.
P.O. Box 36060
San Francisco, CA 94102

- (BY MAIL)** I place each such sealed envelope, with postage thereon fully prepaid for certified mail in the United States mail at San Diego, California.
- (BY FEDERAL EXPRESS)** I tendered each such envelope to a Federal Express courier for delivery to the addressee(s) noted above.
- (State or Federal) I declare, under penalty of perjury, under the laws of the State of California that the above is true and correct.

Executed on July 14, 2008, at La Jolla, California.



Donald R. Warren